IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3281 OF 2004

Smt. Nuzhat Sultana M. Shaikh .. Petitioner

V/s

State of Maharashtra & Ors. .. Respondents

Ms. Nazia Qureshi i/b M.K. Khatri & Co. for the Petitioner.

Mr.G.W. Mattos, A.G.P. for Respondents No.1 to 3.

Mr.J.B. Patel for Respondent No.4.

CORAM : H.L. GOKHALE & S.R. DONGAONKAR, JJ.

DATE : 10TH APRIL 2006

**P.C.** :

1. Heard Ms.Qureshi in support of this petition. Mr.Mattos, A.G.P. appears for Respondents No.1 to 3. Mr.Patel appears for Respondent No.4.

2. This petition is filed by a lady who, along with her husband and brother-in-law, was earlier staying in Room No.32 of Ghaswala Building at Temkar Street, Mumbai-400 003. That building collapsed in 1977 and all the occupants were shifted to a transit camp at Bandra (East). Subsequently, it appears that the plot on which transit arrangement was provided along with the

adjoining plot were both to be developed together. The adjoining plot was marked for SRA Scheme. The Petitioner along with all those occupants were shifted to Bandra (West) and certain consent terms were arrived at in Writ Petition No.2472 of 2002.

3. The case of the Petitioner is that in view of those consent terms, Respondent No.4 agreed to take the Petitioner in their SRA Scheme and reliance is placed on an Agreement with Respondent No.4 which is claimed to have been entered into with the Petitioner.

4. Respondent No.4 has denied having entered into any such agreement creating any right either in favour of the Petitioner's husband or her brother-in-law. In any case, those will be disputed questions which the Petitioner may take up in appropriate proceedings against Respondent No.4 independently. The brother-in-law of the Petitioner has however filed an affidavit giving up his claim for the alternative tenement which would be offered to him by the Building Repair Board for the original tenement No.32 in Ghaswala Building at Temkar Street. This affidavit is affirmed on 5th April 2006 before an officer of this court and is tendered and is taken on record. In view thereof, one thing is clear that though the brother-in-law is the

elder brother of the deceased husband of the Petitioner, he has now given up his claim for this alternative accommodation and the Petitioner being the widow of his younger brother would be entitled to get the accommodation now to be provided in her name. The masters lists maintained by the Repair Board will therefore be accordingly amended and the name of the Petitioner will be substituted in place of Shaikh Mehmood as the person entitled to get the alternative permanent accommodation as and when the same is made available.

5. The Petitioner is one of the large number of unfortunate persons whose buildings have collapsed and in spite of following the other requirements, the buildings which are meant for them are not coming up. It is this kind of problems which lead to the petitions of the present type. The only thing we can hope is that alternative accommodation on a permanent basis is provided to the Petitioner at the earliest. That of course will have to be given as per the number in the masters list.

6. We make it clear that in the event the Petitioner claims an accommodation in the SRA Scheme against Respondent No.4 and succeeds, then she will have to give up her claim for the permanent accommodation for

the original tenement in the building at Temkar Street.

7. Having noted this, in view of the difficulties pointed out by Ms.Qureshi, the Petitioner may apply to the Repair Board on the strength of this order requesting them to correct the masters list and also to give her the alternative accommodation at the earliest. We expect the Repair Board to consider her difficulties and take the decision sympathetically.

8. The petition stands disposed of.

(H.L. GOKHALE, J.)

(S.R. DONGAONKAR, J.)